

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

VENCIL C. GREEN,

Petitioner,

v.

WARDEN,

Respondent.

No. 1:23-cv-00689-JLT-SAB (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY

(Doc. 9)

Petitioner Vencil C. Green is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 25, 2023, the magistrate judge issued findings and recommendations that recommended dismissing the petition as unauthorized and successive. (Doc. 9.) The findings and recommendations were served on Petitioner and contained notice that any objections were to be filed within thirty (30) days of the date of service of the findings and recommendations. (*Id.*) To date, no objections have been filed, and the time for doing so has passed.

In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), the Court has conducted a *de novo* review of the case. Having carefully reviewed the entire file, the Court concludes the findings and recommendations are supported by the record and proper analysis.

1 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
2 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
3 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
4 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28 U.S.C.
5 § 2253. Where, as here, the Court denies habeas relief on procedural grounds without reaching
6 the underlying constitutional claims, the Court should issue a certificate of appealability “if jurists
7 of reason would find it debatable whether the petition states a valid claim of the denial of a
8 constitutional right and that jurists of reason would find it debatable whether the district court was
9 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain
10 procedural bar is present and the district court is correct to invoke it to dispose of the case, a
11 reasonable jurist could not conclude either that the district court erred in dismissing the petition or
12 that the petitioner should be allowed to proceed further.” *Id.*

13 The Court finds that reasonable jurists would not find the Court's determination that the
14 petition should be dismissed debatable or wrong, or that Petitioner should be allowed to proceed
15 further. Therefore, the Court declines to issue a certificate of appealability.

16 Accordingly, the Court **ORDERS**:

17 1. The findings and recommendations issued on May 25, 2023 (Doc. 9) are **ADOPTED**
18 **IN FULL**.

19 2. The petition for writ of habeas corpus is **DISMISSED**.

20 3. The Clerk of Court is directed to **CLOSE THE CASE**.

21 4. The Court declines to issue a certificate of appealability.

22 IT IS SO ORDERED.

23 Dated: July 24, 2023


UNITED STATES DISTRICT JUDGE

25
26
27
28